

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ARMANDO HERNANDEZ, MICHAEL)	
WANDS, JOE ALVAREZ, BALMORES)	
ORTIZ, DAVID RODRIGUEZ, LUIS)	
TEJADA, CHAD GOURLEY, JOSEPH)	
GASDIA, PAUL GASDIA, ERIC)	
CLEVELAND, JASON DIXON, and)	
ERIC BOLISKI, Individually and on)	CIVIL ACTION NO. 06-CV-2675 (CLB)
Behalf of All Others Similarly Situated, As)	(MDF)
Class Representatives,)	
)	
Plaintiffs,)	District Judge Honorable Charles L. Brieant
)	
v.)	
)	
C&S WHOLESALE GROCERS, INC.)	
and RICHARD "RICK" B. COHEN,)	
)	
Defendants.)	
)	
)	
)	
)	

JOINT DECLARATION OF STEVEN L. WITTELS, JEREMY HEISLER
AND DAVID W. SANFORD IN SUPPORT OF PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT

Steven L. Wittels, Jeremy Heisler, and David W. Sanford, state as follows under the penalty of perjury, pursuant to 28 U.S.C. §1746:

1. David Sanford is a founding partner in the Washington, D.C. office of Sanford Wittels & Heisler, LLP. Steven L. Wittels and Jeremy Heisler are co-founding partners in the New York City office of Sanford Wittels & Heisler, LLP. Messrs. Sanford, Wittels and Heisler are joint Lead Counsel for Plaintiffs and the Class. Based on Messrs. Sanford's, Wittels' and Heisler's active participation and supervision in all material aspects of the prosecution and settlement of this action, they have personal

knowledge of the matters set forth in this certification, unless stated otherwise.

2. Messrs. Sanford, Wittels & Heisler make this Declaration in support of Plaintiffs' motion to (i) preliminarily approve the class-wide settlement of this action; (ii) certify the class for settlement purposes; (iii) enter an order approving the mailed notice and claim form; and (iv) set a date for a final Fairness Hearing.

I. Lead Counsel's Background

3. David Sanford graduated from Stanford Law School in 1995. He served as law clerk for District of Columbia United States District Court Judge Gladys Kessler from 1995 through 1996. He has been a member in good standing of the Maryland state bar and the District of Columbia bar since 1997. He has been a member in good standing of the William B. Bryant Inn of Court in Washington, D.C. since 1997. Mr. Sanford is an "AV" rated attorney.

4. Steven Wittels graduated from The University of California at Berkeley (Boalt Hall) in 1984 with highest honors on his class action thesis. After graduation from Boalt Hall, Mr. Wittels joined the New York office of Milberg, Weiss, Bershad, Specthrie & Lerach, then the nation's foremost class action law firm. Mr. Wittels has been a member in good standing of the New York State bar since 1984 and the bar of the Southern and Eastern Districts of New York since 1985.

5. Jeremy Heisler graduated *magna cum laude* from Brooklyn Law School in 1979 where he was an editor of the Law Review. Mr. Heisler was an Appellate Law Assistant for the Appellate Term, First Department during 1980-1981. Mr. Heisler has been a member in good standing of the New York State bar since January 1980 and the bar of the Southern and Eastern Districts of New York since March 1980.

6. From its formation in 2004, the law firm of Sanford Wittels & Heisler, LLP

("SW&H") has been and is significantly involved in civil rights and employment class action litigation. The firm is "AV" rated. David Sanford has served as lead counsel in approximately 50 class actions around the United States, generating millions of dollars in recoveries to class members. From 1981, Jeremy Heisler has been involved in a wide variety of class action litigations and has prosecuted over 50 class action suits, winning substantial recoveries for class members. Steven Wittels has served as lead counsel in approximately 50 class actions around the United States, generating millions of dollars in recoveries to class members.

II. Background of the Litigation and Settlement; the Instant Motion for Preliminary Approval of the Settlement

7. Plaintiffs' motion seeks preliminary approval of the Settlement of this wage and hour class action that has come after twenty-two months of active litigation, extensive discovery, hard-fought arm's length negotiations, and multiple mediation sessions before an experienced mediator, the Honorable Nicholas H. Politan, United States District Court Judge for the District of New Jersey (*retired*).

8. After many months of rigorous negotiations, the parties have reached a Settlement Agreement, which is herewith submitted for the Court's preliminary approval. The proposed settlement sum has a potential total value to the class of \$14,000,000, including attorneys' fees and costs to Plaintiffs' counsel and \$400,000 in incentive fees to Named Plaintiffs and other class members. Eligible class members will receive cash payments based upon the number of weeks worked during the relevant period. Defendant C&S' potential liability under the Settlement Agreement represents a substantial percentage of its likely exposure were litigation to proceed.

9. In arriving at this favorable resolution, Plaintiffs and Class Counsel recognized the expense and length of a trial and potential appellate process, and further

acknowledged that both certification of the class and success on the merits remain uncertain. Class Counsel was mindful of and recognized the potential problems of proof regarding the class claims asserted in this action. Therefore, Plaintiffs and Class Counsel determined that the Settlement is in the best interest of Plaintiffs and the Settlement Classes.

10. Activities leading to the final settlement were extensive and included the following:

- Pre-complaint investigation, including client interviews, document review, and legal research on application of FLSA and state labor laws and regulations to facts emerging from investigation;
- Drafting detailed complaints in complex multi-state wage and hour action;
- Developing legal strategy at various stages;
- Ongoing investigation as well as client consultation. Comprehensive legal and factual research on specific wage and hour, class action, and discovery issues and other matters;
- Preparing class members for depositions and interviews; consulting with class members on their written declarations;
- Enlisting local counsel in various states; collaboration and consultation with local counsel;
- Selecting, engaging, and consulting with experts, particularly accountants BDO Seidman and noted wage and hour authority, Brian Farrington, former Assistant Director in the United States Department of Labor, Wage and Hour Division;
- Massive discovery, including the review and analysis of tens of thousands of documents by Plaintiffs' experts;
- Developing negotiation strategy and preparing for mediation. Research regarding settlement issues. Drafting various mediation proposals, mediation plans, memos, and mediation statements;
- Mediation sessions on multiple dates in 2006 and 2007 – as well as full-day pre-mediation meetings with opposing counsel on May 16, 2007 and

August 7, 2007 and a full-day post-mediation meeting on November 9, 2007;

- Ongoing arms-length negotiations throughout this period and leading up to the final agreement, as well as extensive discussions on facilitating a global settlement of all potential related cases; and

- Drafting and exchanging various versions of the Settlement Agreement and related settlement documents and arriving at final settlement

11. A true copy of the Stipulation and Settlement Agreement (the “Settlement” or the “Agreement”) is annexed hereto as Exhibit A, with true copies of the Proposed Order Preliminary Approving Class Settlement, the proposed Notices, the Claim Form and the Proposed Final Judgment and Order collectively attached to the Agreement as Exhibits 10, 6, 7, 8, and 11, respectively.

12. Pursuant to the terms of the Settlement, Plaintiffs now move for entry of the proposed Order Preliminarily Approving the Settlement, which:

- (i) grants preliminary approval of the Proposed Settlement;
- (ii) schedules a date for the fairness hearing to consider final approval of the Settlement;
- (iii) approves the form and content of the:
 - (a) Notice of Class Action Settlement (referenced in the Settlement Agreement); and
 - (b) Claim Forms (referenced in the Settlement Agreement); and
- (iv) directs the mailing of the Notice of Class Action Settlement, Proposed Settlement, and Claim Forms to the class.

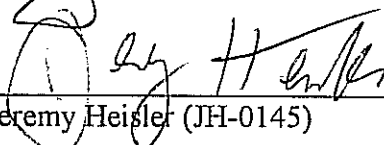
13. Accompanying this Joint Declaration is a Memorandum of Law in Support of Plaintiffs’ motion that demonstrates why, under governing decisional law, this Court should preliminarily approve the proposed Settlement and grant the relief requested in the instant motion.

WHEREFORE, Plaintiffs request that the Court: (i) enter the Order Preliminary Approving Class Settlement, (ii) certify the class for settlement purposes, (iii) approve the form of the Notice and Claim Form, and (iv) set the case down for a final fairness hearing.

We declare under penalty of perjury that the foregoing is true and correct.

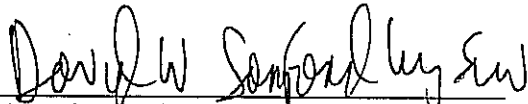
Executed: New York, New York
February 20, 2008



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